



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,652	11/26/2001	Daniel C. Shaw	6278.244a	4497

7590 12/06/2004

Joseph W. Berenato, III  
Myers, Liniak & Berenato  
Ste. 240  
6550 Rock Spring Drive  
Bethesda, MD 20817

EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
----------	--------------

3751

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,652

Applicant(s)

SHAW ET AL.

Examiner

Robert M. Fetsuga

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27,30,31,33,36-45,48 and 49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27,30,31,33,36-45,48 and 49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: See Continuation Sheet

Continuation of Attachment(s) 6). Other: 3 pgs. of PALM INTRANET printout.

Art Unit: 3751

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 27, 30, 33 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaw '758.

The Shaw '758 (Shaw) reference discloses a control system comprising: a plurality of fixtures T,S,U; a source of water 20; a plurality of valves 24; a plurality of sensors D; and a microprocessor 34,44, as claimed. Re claim 48, recitation of "prison" in the preamble thereof is considered merely a label

Art Unit: 3751

where the balance of the claim otherwise defines only a plumbing/water control system. Moreover, the noted elements of Shaw are considered to be "provided". Note claim 16 in Shaw, for example.

Applicant's argue at page 2 of the response filed October 7, 2004 the instant application is not a continuation-in-part of application 07/822,201. The examiner agrees, however, the Shaw patent is indeed prior art to the instant application. Shaw carries a filing date of 06/27/1988, and the instant filing date is, at best, 07/20/1989. Applicant's argue at page 3 of the response the inventorship of the Shaw '233 patent was amended during prosecution by petition. The examiner can not agree. A copy of the current Office records are attached hereto for applicant's convenience. The 09/277,872 application has no petition information associated therewith (pg. 1/1), and there is no petition paper entered in the detailed listing associated therewith (pg. 1/2 and 2/2).

3. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw.

The choice of sensor type would appear an obvious choice to be made as taught by Shaw at column 4, lines 50-52. And, a capacitance sensor is one of the many well known sensor types.

Art Unit: 3751

Applicant's have not separately argued this grounds of rejection.

4. Claims 27, 30, 31, 33, 36, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertshaw, Atkins et al. and Evelyn-Veere et al.

The Robertshaw reference discloses a control system comprising: a plurality of plumbing fixture S; a source of water T; a valve SV; a sensor DS (col. 1 lns. 38-40); and a time-delaying D1 controller CB, as claimed. The Robertshaw controller is a "microprocessor" as it include a timing chip 10 (col. 3 lns. 32-40), and the term "microprocessor" connotes no distinguishing structure thereover. Furthermore, the controller is both adjustable (col. 2 lns. 33-35 and 40-43), and "remote" from the fixture (Fig. 1). The recitation of "prison" in the preambles of claims 27 and 48 is considered merely a label where the balance of the claims otherwise define only a plumbing/water control system. Re claim 36, Robertshaw teaches adjusting the delay to desired requirements (col. 3 lns. 27-28) where the choice of particular delay would appear an obvious choice to be made. Re claim 48, the noted elements of Robertshaw are considered to be "provided" in the same sense as with the elements of applicants' invention. Therefore, Robertshaw teaches all elements set forth in claims 27, 30, 36, 48 and 49

Art Unit: 3751

except for the provision of associating a valve and sensor with individual fixtures.

Although the Robertshaw water control system does not include associating a valve and sensor with individual fixtures, as claimed, attention is directed to the Atkins et al. (Atkins) reference which discloses an analogous water control system which further includes associating a valve 14 and sensor 36 with individual fixtures 10 (col. 1 lns. 29-42). Therefore, in consideration of Atkins, it would have been obvious to one of ordinary skill in the art to associate a valve and sensor with individual fixtures of the Robertshaw water control system in order to prevent wasting of water.

Applicant's argue at pages 3-4 of the response the Robertshaw microprocessor does not delay operation of a fixture after actuation of a sensor. The examiner can not agree, and notes column 1, lines 43-37, in Robertshaw. Applicant's argue at page 4 of the response Atkins is not analogous to the present invention. Even though the examiner does not agree with this statement, such argument does not properly address the prima facie case of obviousness based upon the combined disclosures of Robertshaw and Atkins as set forth supra. Applicant's argue at pages 4-5 of the response the examiner has dismissed "many of Applicant's previous arguments", but does not specify which

Art Unit: 3751

argument was dismissed. Upon further review, the examiner does not find any either.

Re claim 31, although the Robertshaw sensor is not a capacitance sensor, as claimed, attention is again directed to Atkins which discloses use of a capacitance sensor. Therefore, in further consideration of Atkins, it would have been obvious to one of ordinary skill in the art to associate a capacitance sensor with the Robertshaw water control system in order to utilize a user's body capacity.

Re claim 33, Atkins still further teaches locating a controller 18 proximate the valve 14.

Re claim 27, to the extent the timing chip controller disclosed in Robertshaw can not be termed a "microprocessor", attention is directed to the Evelyn-Veere et al. (Evelyn-Veere) reference which teaches at lines 56-61 in column 5 it is a matter of choice to implement a controller either as a microprocessor or as hard-wired. Applicant's argue at page 5 of the response the Evelyn-Veere controller is not analogous to the present invention. Even though the examiner does not agree with this statement, such argument does not properly address the prima facie case of obviousness based upon the combined disclosures of Robertshaw, Atkins and Evelyn-Veere as set forth supra.



Art Unit: 3751

5. Claims 27, 30, 31, 33, 36-39, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertshaw, Atkins and Evelyn-Veere as applied to claim 27 above, and further in view of Morris et al.

Although the Robertshaw water control system does not include a plurality of indicators, as claimed, attention is directed to the Morris et al. (Morris) reference which discloses an analogous water control system which further includes a plurality of indicators (col. 8 lns. 17-35). Therefore, in consideration of Morris, it would have been obvious to one of ordinary skill in the art to associate a plurality of indicators with the Robertshaw water control system in order to facilitate use in a prison. Applicant has not separately argued this grounds of rejection.

6. Claims 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertshaw, Atkins, Evelyn-Veere and Morris as applied to claim 37 above, and further in view of Book.

Although the Robertshaw water control system does not include a plurality of switches and a master switch, as claimed, attention is directed to the Book reference which discloses an analogous water control system which further includes a plurality of switches (col. 11 lns. 2-3) and a master switch 149. Therefore, in consideration of Book, it would have been

Art Unit: 3751

obvious to one of ordinary skill in the art to associate a plurality of switches and a master switch with the Robertshaw water control system in order to facilitate user control. Applicant's have not separately argued this grounds of rejection.

7. Applicant's remarks have been fully considered and have been previously addressed.

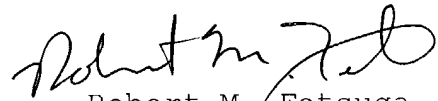
8. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3751

9. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.

A handwritten signature in dark ink, appearing to read "Robert M. Fetsuga", with a stylized, cursive script.

Robert M. Fetsuga  
Primary Examiner  
Art Unit 3751